IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.06.2006

CORAM

THE HON'BLE MR.JUSTICE P.D.DINAKARAN
AND
THE HON'BLE MR.JUSTICE P.P.S.JANARTHANA RAJA

T.C.(A).No.609 to 611 of 2006

Commissioner of Income Tax
Chennai. .. Appellant in all TC(A)s

Vs.

Tamilnadu Tourism Development
Corporation Ltd., Chennai .. Respondent in all TC (A)s

Appeals under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras 'C' Bench dated 24.01.2003 in ITA Nos.1163, 1164, 1165/97 for the assessment years 1992-93, 1993-94 and 1994-95. AGAINST the IT/WT/GI/Appeal No. ITA NOS. 46, 45 & 44/96-97 - GI NO./PA.NO. 23.T Dated 14.02.1997 Assessment years - 1992-93, 1993-94 1994-95 on the file of the Office of the Commissioner of Income Tax (Appeals) III Madras

For Appellant : Mrs.Pushya Sitaraman
Sr.Standing Counsel for
IT Department.

J U D G M E N T

(Judgment of the Court was delivered by
P.P.S. JANARTHANA RAJA, J.)

The revenue has filed the above appeals against the order of the Income Tax Appellate Tribunal, Madras 'C' Bench dated 24.01.2003 in ITA Nos.1163, 1164, 1165/97, raising the following substantial questions of law.

"1. Whether in the facts and circumstances of the case, the Tribunal was right in admitting the additional ground raised by the assessee, to consider the issues not pressed by the

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assessee before the CIT(A)?

2. Whether in the facts and circumstances of the case, the Tribunal was right in setting aside the levy of the additional tax levied on the assessee?"

2. The Revenue preferred the above appeals against the remand order of the Income Tax Appellate Tribunal. The order of the Appellate Tribunal reads as follows:

"These are three appeals preferred by the assessee, a State Govt. Undertaking. All these appeals have a common issue. These are with reference to the observations of the CIT(A) in the last para of his order dt.14-2-97, viz., that the other grounds of appeal are not pressed. The assessee has raised an additional ground with regard to this aspect of the matter stating that this was so withdrawn as insisted upon by the learned counsel on the understanding that the amount added to a loss figure and still the income remaining a loss there would be no additional tax levied on the assessee. However, the decisions are to the effect that additional tax is levied. The assessee was stated to have withdrawn or not insisted upon this ground on the apprehension, which was so observed by the Supreme Court also in CIT Vs. Hindustan Electro Graphites Ltd. (2000) 243 ITR 48, that the law that prevailed at the time the assessee filed his return would be applicable and not that law which was introduced subsequently with retrospective effect to bring into tax which the assessee did not anticipate at the time of filing the return. The learned counsel accordingly insisted that the erroneous impression of the learned counsel whose affidavit is filed in this regard for not insisting upon the issue on merits before the CIT(A) should be considered

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favourably so that the appeal on that basis could be directed to be heard by the CIT(A) on merits. The learned Departmental Representative strongly opposed the consideration of the additional ground as well as the affidavit. He further stated that on merits the CIT(A) did not consider the issues.

2. The rival contentions in this regard have been very carefully considered. The CIT(A) in his order has mentioned the date of hearing as 13-2-97 and the date of the order passed as 14-2-97. He had noted that the decision of Bombay High Court in Saiko Matex Engineering (P) Ltd. Vs. D.C.Pant, Dy.CIT(IT) reported in 108 C.T.R., had no effect after the amendment was given retrospective operation. He accordingly proceeded to hold that additional tax was leviable even when the loss claimed by the assessee is reduced because of additions. The Supreme Court in CIT Vs. Hindusthan Electro Graphites Ltd. supra ahd observed, as was stated by the learned counsel and that subsequently in one other order the Supreme Court has also held that additional tax could be levied even where the returned loss is reduced. It can therefore be appreciated that the claim of the assessee that it may not be imposed additional tax could not be rejected outright and this was the reason for not insisting upon the decision on merits. In our opinion, the plea made on behalf of the assessee sounds reasonable on the facts and circumstances of the case. We accordingly accept the plea of the assessee and remit the matter to the file of the CIT(A) for considering the issue on merits.

3. The issues raised on merits could not be considered at this juncture which were not considered by the CIT(A) and therefore could not be said to

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arise from his order.

4. In the result, the appeals are allowed in part."

3. The Appellate Tribunal merely remanded the matter to the file of the CIT(A) with a direction to consider the case on merits. No prejudice or interest of the revenue is affected by the remand order. Hence, no substantial questions of law arise for consideration of this Court and the tax cases are dismissed. No costs. Consequently, T.C.M.P. Nos.1516 and 1517 of 2006 are closed.

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Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Assistant Registrar of
Income Tax Appellate Tribunal
Rajaji Bhavan, Besant nagar
Chennai.

2. The Commissioner of Income Tax
Chennai.

3. The Commissioner of Income Tax (Appeal III)
Madras.

4) The Deputy Commissioner of Income taX
Special Range III, Madras - 600 034.

+ one cc to M/s. Pushya Sitaraman, Advocate sr no. 25966

AK(CO)
NM(04.07.2006)

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